

Message

From: Perkins, Erin [Perkins.Erin@epa.gov]
Sent: 5/28/2020 5:44:22 PM
To: Boydston, Michael [Boydston.Michael@epa.gov]; Chin, Lucita [Chin.Lucita@epa.gov]
CC: Matsumoto, Kimi [Matsumoto.Kimi@epa.gov]; Logan, Paul [Logan.Paul@epa.gov]
Subject: RE: DB NHPA
Attachments: NRC - OST filing Feb 2020.pdf

Mike – Lucita sent me the attached filing in 2/2020 by the Tribe addressing NEPA and NHPA....

From: Boydston, Michael <Boydston.Michael@epa.gov>
Sent: Thursday, May 28, 2020 10:50 AM
To: Chin, Lucita <Chin.Lucita@epa.gov>; Perkins, Erin <Perkins.Erin@epa.gov>
Cc: Matsumoto, Kimi <Matsumoto.Kimi@epa.gov>; Logan, Paul <Logan.Paul@epa.gov>
Subject: RE: DB NHPA

I was about to send this, but was trying to find out about the status of the appeal to the NRC. Doesn't add very much except some detail, but since I've already typed it, here goes:

I haven't been able to keep up with this matter very well. But some of the more recent NRC actions are described in the [9/26/19 NRC decision](#) and the [10/30/2018 NRC decision](#). These cover various survey and consultation efforts since 2014. Looks to me like from about 2016-19 the NRC staff were trying to come to a survey agreement with the Tribe. There was agreement on a survey approach in March 2018, then it broke down and in June 2018 the staff ended field work. And according to the 9/2019 decision, "[t]he Staff acknowledged in its motion that no new cultural resources information had been obtained" since field work ended in 2018. A bit later, the ASLB directed the staff to either resume implementation of the March 2018 approach or participate in another evidentiary hearing. The staff chose the former, and approached the tribe about survey methodology. They met in Feb. 2019, unsuccessfully, and returned to the hearing route. So it sounds like there's been a lot of discussion about preparing for surveys and attempts to agree on methodology, but only limited field work.

But also, as I read the DC Circuit decision, the holding is dependent on the agency's administrative process: "For purposes of our review, we accept the Board's finding—undisturbed by the Commission—that the agency did not fulfill its NEPA responsibilities. We do not review the merits of that conclusion." And the most recent (I think) NRC action is the [ASLB's December 2019 decision](#), in which the Board ruled for the staff and found that "under the circumstances, the NRC Staff has satisfied the hard look requirement under NEPA."

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From: Chin, Lucita <Chin.Lucita@epa.gov>
Sent: Thursday, May 28, 2020 10:48 AM
To: Perkins, Erin <Perkins.Erin@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>
Cc: Matsumoto, Kimi <Matsumoto.Kimi@epa.gov>; Logan, Paul <Logan.Paul@epa.gov>
Subject: RE: DB NHPA

Hey Erin –

The NRC took this back and started negotiating with the Tribe over terms of a new cultural survey. They were trying to come to agreement on methodology (scope of the survey – i.e. – how much would they walk and how big of swaths would they cover) and tribal participation.

In the end, the NRC staff decided they were too far apart from the Tribe and instead of moving forward with the new survey, they filed a motion to end the process. This was before the ASLB. They used the NEPA theory that the information needed was not discoverable (I can't remember the correct terminology, but I am guessing you are familiar with this NEPA reg). This is currently before the full NRC Commission on appeal. I'm guessing that regardless of the outcome, it will be appealed to the DC Circuit again.

I attached the ASLB's decision. Hope that it's helpful.

Lucita Chin

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From: Perkins, Erin <Perkins.Erin@epa.gov>
Sent: Thursday, May 28, 2020 10:10 AM
To: Boydston, Michael <Boydston.Michael@epa.gov>; Chin, Lucita <Chin.Lucita@epa.gov>
Cc: Matsumoto, Kimi <Matsumoto.Kimi@epa.gov>; Logan, Paul <Logan.Paul@epa.gov>
Subject: DB NHPA

Hi Mike –

I'm trying to sort through all of the potential NEPA issues for Dewey Burdock and have just read the DC Cir opinion about how NRC did not comply with NEPA b/c it did not do an adequate cultural resources impacts analysis (setting aside NHPA). Do you know whether NRC did anything further in its cultural resource surveys/analysis to address this opinion. Was a new NEPA document issued? The only thing I could find on the NRC DB webpage was the original 2014 FEIS and the 2014 Final programmatic agreement. Do you know whether NRC did (or is doing) anything further in response to the DC Cir. decision? And if I've asked this question(s) before, I really apologize...!

Thanks,
Erin